

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 1692 of 2004(B)

AGAINST THE ORDER DATED 23/08/2003 IN IA.2337/2001 IN AS.343/2001
of II ADDL. DISTRICT COURT, PALAKKAD

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PETITIONER:

MANIKANTAN, S/O.NATESA MUDALIAR,
RESIDING AT NEELIKKAD, THATHAMANGALAM VILLAGE,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.VARGHESE K.PAUL
SRI.SREEKANTH.K.R
SMT.G.GEETHISHA

RESPONDENTS:

1. KAMAKSHI AMMAL, W/O.CHAMIYAPPA MUDALIAR.
2. DORAISWAMY S/O.KAMAKSHI AMMAL.
3. MEENAKSHI, D/O.THOMITHI MUDALIAR.
4. PARU, D/O.THOMITHI MUDALIAR,
5. PARVATHY, D/O.THIMOTHI MUDALIAR

ALL ARE RESIDING AT PUTHEN PARAMBIL, NEELIKKAD,
THATHAMANGALAM VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.

R3 TO R5 BY ADV. SRI.G.HARIHARAN
SRI.A.SREERAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.1692/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 - TRUE COPY OF ORDER DT.23.8.03

/TRUE COPY/

PIUS C. KURIAKOSE,J.

W.P.(C) No.1692 of 2004

Dated: 1st August, 2007

JUDGMENT

This Writ Petition is remaining defective on the reason that the 2nd respondent is no more and steps have not been taken for impleading his legal heirs. I.A.No.15253 of 2006 is seen already filed for impleading the legal heirs of the 2nd respondent. Mr.A.Sreeramakrishnan, counsel appearing for respondents 3 to 5 submits that the contesting respondents are respondents 3 to 5 and that the deceased 2nd respondent was not a contesting respondent. In view of the above submission, I am of the view that the correctness of the impugned order can be examined even in the absence of the legal heirs of the 2nd respondent.

2. Heard both sides.

3. Under Ext.P1 order the learned District Judge has dismissed I.A.No.2337/01 which was filed to condone the delay of 246 days caused in the matter of filing the appeal by the writ petitioner. Having gone through Ext.P1 and having considered the rival submissions made at the Bar, I am not persuaded to agree with Mr.V.Chitambaresh, counsel for the petitioner that Ext.P1 is vitiated to the extent of warranting interference in the supervisory jurisdiction

of this court under Article 227 of the Constitution. Nevertheless noticing that the petitioner's suit for recovery of possession on the strength of title was dismissed, I am inclined to condone the delay on the consideration that as far as possible all causes are to be adjudicated on their merits and not to be thrown out at the threshold on technical reasons such as delay. One of the reasons which weighed the learned Judge for passing Ext.P1 was that the petitioner did not have the 'guts' to mount the witness box. Mr.Chitambaresh would submit that if an opportunity is given the petitioner will adduce evidence. Accepting the above submission, I set aside Ext.P1 and remand I.A.No.2337/01 back to the District Judge. The District Judge will afford an opportunity to the petitioner for adducing whatever evidence the petitioner wants to in I.A.No.2337/01 including examination of himself and the doctor who issued medical certificate. The respondents are permitted to adduce counter evidence also. But the above order is conditional upon the petitioner paying a sum of Rs.1000/- by way of cost to the contesting respondents in this court either directly or through their counsel in this court and Rs.500/- to the Kerala High Court Legal Services Committee within one month from today. Once the District Judge notices evidence regarding

payment of cost by the petitioner, the learned District Judge will repost I.A.No.2337/01 for enquiry. Fresh orders will be passed on I.A.No.2337/01 on the basis of the evidence which comes on record including the counter evidence which may be adduced by the respondents. It is made clear that I have not expressed any opinion regarding the merits of I.A.No.2337/01.

The Writ Petition is disposed of as above. No costs.

srd

PIUS C.KURIAKOSE, JUDGE